New York State Broadcasters Association, Inc.

May 7, 2018

The Honorable Marsha Blackburn
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office building
Washington DC 20515

RE: Answers to Hearing Questions on the PIRATE Act

Dear Chairman Blackburn:

Thank you for the opportunity to appear before the subcommittee on Thursday March 22, 2018 to discuss the continued problem of illegal pirate radio operators. Illegal pirate radio operations harm the public by: 1) interfering with the broadcast emergency alert system (EAS); 2) exposing communities to levels of RF radiation above government standards; 3) interfering with FAA communications channels and 4) ignoring all FCC and consumer protection laws.

Attached please find my answers to questions that were sent to me following the hearing. The New York State Broadcasters Association, Inc. and the National Association of Broadcasters strongly support the PIRATE Act.

If you need additional information, please do not hesitate to contact me.

Sincerely,

David L. Donovan

cc: The Honorable Paul Tonko
The Honorable Adam Kinzinger
Mr. Evan Viau

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David L. Donovan, President
New York State Broadcasters Association, Inc.

Answers to Hearing Questions Regarding Pirate Radio
Subcommittee Hearing: Thursday March 22, 2018

The Honorable Adam Kinzinger:

As a pilot, it concerned me to hear that illegal pirate operations have led to documented interference with aviation communications. Can you elaborate on the harm that these pirate stations pose to aviation safety.

a. How would policies in the PIRATE Act better enable the FCC to shut down pirate radio operations and minimize aviation safety risk and other harms?

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration ("FCC"), creating an extremely dangerous situation. For example, in 2013, the Federal Communications Commission ("FCC") and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice's Press Release, the FAA complained about pirate radio interference:

> "According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast."[1]

Over the years the FCC has documented numerous of cases involving interference to airport communications from pirate radio operations. For example, the FCC has found interference to FAA frequencies from illegal pirate operations in the Bronx NY[2], Sacramento[3], Miami[4], San Juan[5], San Jose[6], West Palm Beach[7], Boston/Brockton [8]and Broward County FL[9]. Of course these are only the

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[1]Department of Justice Press Release, Tuesday March 12, 2013 at https://www.justice.gov/usao-ma/pr/radio-equipment-seized-pirate-radio-station; visited March 18, 2018 at 12:03pm
[2]*In the Matter of Ronald Reid Bronx, New York, 2009 FCC LEXIS 5649 (January 6 2010)*
[3]COMPLIANCE AND INFORMATION ACTION; FCC CLOSES DOWNUNLICENSED RADIO OPERATION THAT THREATENED AIR SAFETY ATSACRAMENTO AIRPORT; FOURTH AIRPORT INTERFERENCE INCIDENT INFIVE MONTHS*1998 FCC LEXIS 1396,(*March 20, 1998)
[4]*In re Veargis, 28 FCC Rcd 1450; 2013 FCC LEXIS 2130 (F.C.C., May 16, 2013);* MIAMI PIRATE FM BROADCAST STATION SHUT DOWN, *1991 FCC LEXIS 983 (*February 26, 1991)
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[6]*In re Garcia, 26 FCC Rcd 3750, 2012 FCC LEXIS 1043 (F.C.C., Mar. 8, 2012)*
[7]*In re Robens Cheriza W. Palm Beach,27 FCC Rcd 493; 2012 FCC LEXIS 1359 (F.C.C., Apr. 3, 2012)*
[8]*In re*Antonio Miranda & Erminda Miranda, Brockton, MA*2007 FCC LEXIS 8152 (*October 30, 2007)
[9]*In the Matter of Kedner Maxime Oakland Park, FL; 31 FCC Rcd 8876; 2016 FCC LEXIS 2737 (August 12, 2016)*

cases where complaints have been filed and the pirates have been caught. With respect to interference to airport frequencies, it represents only a small portion of the much larger problem.

The growth in pirate illegal pirate radio stations increases the probability there will be more interference issues with airport communications. Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems.

First, there is the threat of "adjacent channel spill over" interference. The FM broadcast band (88 to 107 MHz) is adjacent to aeronautical frequencies (108- 137MHz). Because illegal pirate stations *ignore all engineering rules and standards*, there is a significant chance that their signal will spill over on to airport communications systems. Modern aviation systems – both on-board aircraft and on the ground, particularly in the vicinity of airports – use radio spectrum for a variety of important purposes, including voice communications and navigation. Since pirate stations may operate at power levels far greater than FAA equipment, the chances that illegal pirate stations might cause electromagnetic interference to nearby FAA facilities is significant. The result could be inaccurate navigational guidance to the pilot – showing the aircraft to be on course when it's not – or interference to air-to-ground communications. We can all agree that such results are best avoided.

The risk of interference grows as the number of illegal pirate stations increase. For example in 2016, the New York Association of Broadcasters ("NYSBA") commissioned an engineering analysis performed by the noted engineering firm of Meintel, Sgrignoli and Wallace. MSW found a pirate station in Newark, NJ, operating on 107.7 MHz, which is only one channel away from being directly adjacent to the FAA frequencies that start at 108 MHz. Newark has an extremely busy airport. The survey found an unauthorized pirate station in Brooklyn operating on 107.9, which is directly adjacent to FAA frequencies. This station could potentially affect communications at JFK airport. To avoid this type of interference, the FCC must make sure that there are no illegal pirate radio stations operating in the upper portion of the FM radio band.

The second type of interference is "intermodulation product" or "harmonic skip." This interference concern is not limited to pirate stations operating on FM channels that are adjacent to FAA frequencies. Pirate stations may unexpectedly cause "intermodulation products" that cause interference to frequencies assigned to the FAA. Intermodulation is a commonly known interference mechanism caused by strong local signals overloading or overpowering the tuner in a receiver. Typically, this non-linear effect will produce interfering signals on multiple frequencies at the front end of the aeronautical radio. For example, a strong pirate signal on 105.1 MHz may mix with an aeronautical signal on 115.05 MHz and produce an intermodulation product at 125.0 MHz, potentially causing interference to the voice communications of aircraft.

The potential for interference from FM broadcasts to FAA communications is well known. For years the FAA sought to become involved in licensing FM stations. In 2006, however, the FAA decided not to become directly involved in the licensing of stations. Nonetheless it recognized the on-going concern and adopted a coordination policy with the FCC.

> FM broadcast service transmissions operating in the 88.0–107.9 MHz frequency band pose the greatest concern to FAA navigation signals. The FAA, FCC and NTIA are collaborating on the best way to address this issue.[10]

If a problem arises with licensed broadcasters, which it rarely does, the FCC is able to immediately find the stations and resolve the problem. This is not the case with an illegal pirate radio operator. Because pirate stations may start transmitting at any time, at any power level, and without notice, neither the FCC nor the FAA can predict when interference to aeronautical frequencies will occur.

The potential harm from this type of interference cannot be overstated. The FCC's current approach is to apply a *post hoc* remedy. Enforcement can be taken only after the interference has occurred and affected FAA frequencies. Thus, as the number of illegal pirate stations in operation increases, there is a concomitant increase in the potential for significant interference to FAA communications systems.

The interference concerns are exacerbated because it takes time to track down an illegal pirate radio operations. Interference from legitimate broadcast stations can be resolved immediately upon detection. This is not the case with illegal pirate operations. It can take days to track down, find and terminate a specific pirate stations. During this time the interference continues.

The PIRATE Act will help solve this problem. The enforcement tools given to the FCC will help reduce the overall number of illegal pirate operators broadcasting in the FM band, especially in major urban areas. Such a reduction will reduce the risk that there will be interference to airport communications. The new tools will provide the process and necessary penalties to not only eradicate existing pirate stations, but also deter new pirate operators. It will accomplish this in a number of ways.

First, increasing the fines to $2 million sends a strong signal to illegal pirate radio operators that the FCC is serious about illegal pirate operations, and creates a strong deterrent to unlawful pirate broadcasting.

Second, the new law would hold those who "facilitate" illegal operations liable for up to $2 million in fines. This would include property owners who *knowingly* allow their property to be used for illegal pirate operations. This provision is extremely important. While it may be difficult to track down a pirate operator, it is not difficult to find the location from which it is transmitting. In many cases the property owner or building supervisor is being compensated for allowing the pirate operator to use the property. While you can move an illegal antenna, you cannot move a building. Holding property owners accountable has been successful in reducing criminal activity.

Third, the PIRATE Act would give the FCC the FCC the authority to seize illegal equipment. Today, the FCC must work through the various offices of the U. S. Attorneys office; pirate radio is not on the top of their enforcement lists. The new $2 million fines will help to get these offices' attention. Moreover, giving the FCC the ability to go to court and obtain an order to seize equipment will provide a more efficient process.

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[10] Department of Transportation, Federal Aviation Administration14 CFR Part 77 [Docket No. FAA–2006–25002; Amendment No. 77–13] RIN 2120–AH31 Safe, Efficient Use and Preservation of the Navigable Airspace 75 Fed Reg. No 39, July 21,2010 at 42296, 42297

Fourth, the PIRATE Act envisions a more expedited process for assessing fines. The current process can take months or years to assess and collect a fine from a pirate radio operator.

Fifth, the PIRATE Act requires the FCC *affirmatively* to conduct enforcement sweeps in cities with high levels of illegal pirate activity. Thus, the FCC will be obligated to seek out and eliminate the interference, and not simply wait for the interference to occur and then try to find the illegal operator. This will significantly diminish the risk to aviation.

Finally, Florida, New Jersey and New York have made pirate operation illegal under state law. Other states, such as Massachusetts, are looking legislation. The PIRATE Act recognizes state laws as an important enforcement tool.

Taken together, these new enforcement tools will ensure that the number of illegal pirate stations declines. The deterrent effect provided by the legislation will serve as a preventative measure, significantly reducing the number of illegal pirate operators and the risk of interference to frequencies used for airport communications. This approach is superior to the current, *post hoc*, enforcement policy.

The Honorable Paul Tonko

1. Why is it important for us to extend liability to those who facilitate pirate operations?

Today pirate radio operations have become very sophisticated. Upon the receipt of a Notice of Unlicensed operation from the FCC, illegal operators often move their facilities to a different building. In addition, many of the illegal pirate stations are not necessarily located on the property or building from which the illegal radio broadcast transmit. For example, some illegal pirate stations actually operate from another location. Some are from nearby states and others from out of the country. Thus, while the illegal transmitter may be located in New York, the actual pirate operates from a distant location, sending a signal to the illegal transmitter via microwave or even satellite. Tracking down these types of illegal operators is extremely difficult. You can find the illegal transmitter, but you cannot find the pirate to hold them accountable.

Extending liability to those who facilitate illegal pirate operations will significantly help the enforcement effort. First, the PIRATE Act will hold liable those property owners who knowingly allow their property to be used for illegal pirate operations. This approach is fairly straight forward. You can move an illegal antenna and transmitter, but you cannot move a building. The goal is to deny the illegal operator a location or platform from which to engage in illegal broadcasts. An approach that focuses on property owners has been used successfully in other contexts, including drug enforcement.

Under current law the FCC already has the authority to hold a property owner liable. The FCC's precedent, however, requires that the property owner be intricately involved in pirate operations. For example, to be held liable the property owner must provide electricity, Internet access, allow the pirate to have exclusive use of the property, and otherwise participate in the illegal operations. In other words, to be liable, the property owner must effectively be a partner of the pirate.

Unfortunately this approach does not reflect most of the pirate radio scenarios. For example, pirate radio operators erect illegal transmitters on rooftops throughout New York City. Some instances involve cases where the building owner or supervisors have rented space on a rooftop or balcony.

The PIRATE Act will allow the FCC to proceed on the basis that property owners have knowingly allowed a pirate station access to the property. There would be no need to provide additional elements, such a providing free electricity, Internet access or participation in the operations. Importantly, the PIRATE act would require that property owners knowingly allow such operators on their property. There is no strict liability. Prior to any assessment of a fine, the property owners would receive a notice from the FCC. It is only after the notice has been received, and ignored, that a property owner could be held liable under the PIRATE Act.

The "facilitation" provision is not confined to property owners. It would also apply to those who knowingly provide direct financing, or supply equipment or services to illegal pirate

operations. Again, the PIRATE Act will require that these entities knowingly facilitate pirate operations. As with property owners, we believe this approach strikes the appropriate balance.

We believe the facilitations provisions are vitally important to resolving the illegal pirate radio problem. The "facilitation" provisions are a key element of this legislation.

2. Can you explain the concerns with interference with FAA frequencies

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration ("FCC"), creating an extremely dangerous situation. For example, in 2013, the Federal Communications Commission ("FCC") and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice's Press Release, the FAA complained about pirate radio interference:

> "According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast."[11]

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The growth in pirate illegal pirate radio stations increases the probability there will be more interference issues with airport communications. Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems.

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spill over on to airport communications systems. Modern aviation systems – both on-board aircraft and on the ground, particularly in the vicinity of airports – use radio spectrum for a variety of important purposes, including voice communications and navigation. Since pirate stations may operate at power levels far greater than FAA equipment, the chances that illegal pirate stations might cause electromagnetic interference to nearby FAA facilities is significant. The result could be inaccurate navigational guidance to the pilot – showing the aircraft to be on course when it's not – or interference to air-to-ground communications. We can all agree that such results are best avoided.

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The PIRATE Act will help solve this problem. The enforcement tools given to the FCC will help reduce the overall number of illegal pirate operators broadcasting in the FM band, especially in major urban areas. Such a reduction will reduce the risk that there will be interference to airport communications. The new tools will provide the process and necessary penalties to not only eradicate existing pirate stations, but also deter new pirate operators. It will accomplish this in a number of ways.

First, increasing the fines to $2 million sends a strong signal to illegal pirate radio operators that the FCC is serious about illegal pirate operations, and creates a strong deterrent to unlawful pirate broadcasting.

Second, the new law would hold those who "facilitate" illegal operations liable for up to $2 million in fines. This would include property owners who *knowingly* allow their property to be used for illegal pirate operations. This provision is extremely important. While it may be difficult to track down a pirate operator, it is not difficult to find the location from which it is transmitting. In many cases the property owner or building supervisor is being compensated for allowing the pirate operator to use the property. While you can move an illegal antenna, you cannot move a building. Holding property owners accountable has been successful in reducing criminal activity.

Third, the PIRATE Act would give the FCC the FCC the authority to seize illegal equipment. Today, the FCC must work through the various offices of the U. S. Attorneys office; pirate radio is not on the top of their enforcement lists. The new $2 million fines will help to get these offices' attention. Moreover, giving the FCC the ability to go to court and obtain an order to seize equipment will provide a more efficient process.

Fourth, the PIRATE Act envisions a more expedited process for assessing fines. The current process can take months or years to assess and collect a fine from a pirate radio operator.

Fifth, the PIRATE Act requires the FCC *affirmatively* to conduct enforcement sweeps in cities with high levels of illegal pirate activity. Thus, the FCC will be obligated to seek out and eliminate the interference, and not simply wait for the interference to occur and then try to find the illegal operator. This will significantly diminish the risk to aviation.

Finally, Florida, New Jersey and New York have made pirate operation illegal under state law. Other states, such as Massachusetts, are looking legislation. The PIRATE Act recognizes state laws as an important enforcement tool.

Taken together, these new enforcement tools will ensure that the number of illegal pirate stations declines. The deterrent effect provided by the legislation will serve as a preventative measure, significantly reducing the number of illegal pirate operators and the risk of interference to

frequencies used for airport communications. This approach is superior to the current, *post hoc*, enforcement policy.

3. **Why do you believe the FCC needs more enforcement "tools" to help with the pirate radio problem?**

The enforcement mechanisms contained in the Communications Act are generally designed to focus on those entities that are, or want to be, FCC licensees. There is a general consensus among legitimate licensees and users that they avoid interference and are willing to operate by the basic rules established by the FCC. These entities are inclined to follow FCC regulations, including enforcement decisions, because they want to remain as legitimate licensees. Accordingly the enforcement process and sanctions, which are for the most part civil sanctions, are effective in policing the spectrum. While it is possible to trigger criminal liability under the Communications Act of 1934 ("Communications Act" or "Act"), it is rarely employed. In short, the Communications Act did not contemplate a class of individuals that would knowingly operate illegal radio transmitters outside the law.

In recent years we have seen two critical factors leading up to the illegal pirate radio problem. First, there are a growing number of individuals who have determined that they can operate outside the law and the FCC's licensing process. There are simply no deterrent to operating illegally. The FCC's primary enforcement tool has been the Notice of Unlicensed Operation, which is simply a letter asking the pirate station to cease operations. These letters are generally ignored. Historically there has been little enforcement follow up, with relatively few fines and even fewer equipment seizures. The present enforcement system does not deter any illegal pirate operations.

Second, adding to this problem is the rapid decline in the price and size of transmitting equipment. In the past, radio transmitters were huge, taking up an entire room. Today an illegal transmitter can be as small as a large suitcase. The costs of equipment have also declined. You can obtain an illegal transmitter for anywhere from $5,000 to $10,000. By purchasing equipment on line from a foreign country, illegal operators are able to use equipment that has not been approved by the FCC.

The best evidence can be found by those who keep track of Pirate operations in New York City. An organization named "Brooklyn Pirate Watch" (https://twitter.com/BkPirateWatch?lang=en)observed recently on Twitter that on the evening of May 5, 2018 that if found 35 pirates operating in and around Flatbush, Brooklyn. Brooklyn Pirate Watch commented on the FCC's recent claims that it was making progress in a Twitter post on April 12, 2018 (https://twitter.com/BkPirateWatch)

> "Significant progress"?! It doesn't sound all that significant to us (so far) in southern Bklyn. Still lots of pirates causing interference to legit stations all up & down the FM dial."

Importantly, this is not a situation where there are a few anecdotal cases of illegal pirate operations. As noted in my written testimony, the engineering analysis performed by the noted

engineering firm of Meintel, Sgrignoli and Wallace documented a systematic problem over a four year period. Even after the hearing, the Brooklyn Pirate Project correctly observed that nothing has really changed.

There is no question that the current enforcement process is not working. Past FCC administrations have not been able to make significant progress in reducing the number of illegal pirate radio operators. Under FCC Chairman Wheeler, pirate enforcement lapsed. Under FCC Chairman Pai, there is a renewed attitude to enforcement. The current FCC, however, is limited in the tools it can use to enforce against illegal pirate operations. Historically these tools have proven to be inadequate.

We believe it is time to change the Communications Act and give the FCC greater enforcement authority. The new tools will provide the process and necessary penalties to not only eradicate existing pirate stations, but also deter new pirate operators. It will accomplish this in a number of ways.

First, increasing the fines to $2 million sends a strong signal to illegal pirate radio operators that the FCC is serious about illegal pirate operations, and creates a strong deterrent to unlawful pirate broadcasting.

Second, the new law would hold those who "facilitate" illegal operations liable for up to $2 million in fines. This would include property owners who *knowingly* allow their property to be used for illegal pirate operations. This provision is extremely important. While it may be difficult to track down a pirate operator, it is not difficult to find the location from which it is transmitting. In many cases the property owner or building supervisor is being compensated for allowing the pirate operator to use the property. While you can move an illegal antenna, you cannot move a building. Holding property owners accountable has been successful in reducing criminal activity.

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